IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO. 867 OF 2004

IN

SUM. SUIT NO. 82 OF 2004

Dr. Chariappa Bopian . .. Plaintiff.

vs.

Danjit Kripalani & Anr. .. Defendants.

Mr. Mohana Nair for plaintiff.

Mr. S.V. Vora for defendants.

CORAM : S.U. KAMDAR, J.

DATE : 4th October, 2005.

P.C.:

. The present suit is filed for recovery of a sum of Rs. 3 lacs with interest of Rs. 1,62,000/- at the rate of 18% per annum. The claim is based on three documents which are at Exhibits A, B and C which indicate payment of Rs. 7 lacs towards the consideration for transfer of tenancy. It is an admitted position that the tenancy has not been transferred and Rs. 4 lacs are paid but the amount of Rs. 3 lacs is not paid. The learned counsel appearing for the defendants however contends that

the document at Exhibit C is fraudulent and he has received only Rs. 4 lacs which he has refunded. From the perusal of Exhibits A, B and C and the subsequent correspondence it is clear that the amount paid is Rs. 7 lacs and not Rs. 4 lacs as claimed by the defendant. Although by Exhibit H to the plaint the plaintiff has clearly stated that out of Rs. 7 lacs Rs. 4 lacs are returned and the balance returnable is Rs. 3 lacs. Exhibit I being letter dated 6.1.2001 nowhere mentions that the amount paid is only Rs. 4 lacs and not Rs. 7 lacs. There is various correspondence including advocate's letter and nowhere therein the plaintiff has pointed out that the payment of Rs. 7 lacs was not made. In that view of the matter, I do not find any substance in the present case. I direct the defendant to deposit a sum of Rs. 3 lacs in this Court within a period of four weeks failing which the plaintiff will be entitled to decree. The amount if so deposited, the Prothonotary and Senior Master is directed to deposit the same in a fixed deposit with any nationalised bank initially for a period of one year and renew the same from time to time till further orders from this Court.

2. Suit transferred to the list of Commercial Causes. Written Statement or points of defence to be filed four weeks from the date of deposit. Affidavits list of documents to be filed within four

weeks thereafter. Inspection within four weeks thereafter. Suit to be on Board of the learned Judge taking Commercial Causes.